

Chapter CCVIII.¹

THE QUORUM.

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638. While once ruled that a quorum consists of one more than a majority, it is now, held that after the House is organized the quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by action of the House.

Instance wherein the House authorized the Speaker to issue warrant for the arrest of absentees.

On May 9, 1913,² during the consideration of the bill (H. R. 32) to provide for the appointment of an additional circuit judge, the House found itself without a quorum and a call of the House was ordered.

Mr. Oscar W. Underwood, of Alabama, moved that the Speaker be authorized to issue warrants for the arrest of absentees.

The question being taken, the Speaker announced:

Two hundred and eighteen Members have responded to their names—a quorum; 216 Members constitute a quorum.

Mr. James R. Mann, of Illinois, submitted that 216 did not constitute a quorum of the House.

The Speaker³ said:

Two hundred and sixteen Members constitute a quorum. Four hundred and thirty-five Members constitute the whole membership of the House; but one is dead and three have never been sworn in. The Chair does not know whether their names are carried on the roll or not.

¹Supplementary to Chapter LXXXV.

²First session Sixty-third Congress, Record, p. 1457.

³Champ Clark, of Missouri, Speaker.

They ought not to be. This matter was in a good deal of doubt for a long time until Speaker Henderson rendered a very elaborate written opinion in which he defined what constitutes a quorum as being one more than a majority of Members elect sworn in and living who have neither resigned nor been expelled.

639. The quorum required in the “House as in Committee of the Whole” is a quorum of the House and not a quorum of the Committee of the Whole.

The only distinction between consideration in the House and consideration in the House as in Committee of the Whole is that in the latter, debate proceeds under the five-minute rule and there is no general debate.

The motion for the previous question is in order in the House as in Committee of the Whole and operates as in the House.

On January 7, 1928,¹ the House had under consideration the joint resolution (H. J. Res. 131) providing for a commission to investigate and report upon the facts connected with the sinking of the submarine *S-4*, when Mr. Bertrand H. Snell, of New York, asked unanimous consent that the resolution be considered in the House as in Committee of the Whole.

Mr. Eugene Black, of Texas, submitted a parliamentary inquiry as to the number of Members constituting a quorum in the House as in the Committee of the Whole, and the Speaker answered tentatively, but later in the day ruled:

The Chair desires to correct a statement he made this morning in answer to a parliamentary inquiry by the gentleman from Texas. At the time the Chair had not had much opportunity to consider the question. In response to the question of the gentlemen from Texas as to what would constitute a quorum of the House when the House was considering a bill in the House as in Committee of the Whole, the Chair said:

“The Chair thinks a quorum would be 100, as in the case in the Committee of the Whole House on the state of the Union.”

After some consideration and examination of the precedents, the Chair thinks that he was in error. The Chair quotes from the decision by Mr. Speaker Cannon, rendered February 28, 1905, to be found in Hinds’ Precedents, section 4925, volume 4. The question arose as to whether a motion to order the previous question was in order in the House while sitting as in Committee of the Whole. Mr. Speaker Cannon said:

“The Chair is informed that under prior rulings, under similar orders, when a bill is in the House as in Committee of the Whole the consideration of it proceeds under the five-minute rule, but that the House does not lose its control by a majority over the bill, and that it is in the power of the House to order the previous question upon the bill and amendments pending, if there be any.”

When a bill is being considered in the House as in Committee of the Whole, the Chair is of opinion that the only difference between that consideration and the consideration of the bill in the House is that the former consideration proceeds under the five-minute rule and there is no general debate. The Chair thinks that all of the rules of the House, except those two, govern bills that are considered as this resolution is being considered. Under these circumstances a quorum of the House, considering a bill or resolution as in Committee of the Whole House on the state of the Union, would not be 100, but would be 218.

The Chair thinks it important that there should be a definite understanding of the situation, and that the only difference between considering a bill as this resolution has been considered and considering a bill in the House, is that in the former instance we proceed under the five-minute rule and that there is no general debate.

¹ First session Seventieth Congress, Record, p. 1142.

In answer to a further inquiry from Mr. Carl R. Chindblom, of Illinois, on the method of closing debate in the House as in Committee of the Whole, the Speaker added:

The Chair thinks the previous question operates precisely as it does in the House.

640. Construction of the rule providing for counting a quorum.

Members voted as present under section 3 of Rule XV may be permitted to vote after the calling of the roll is concluded.

On February 23, 1911,¹ on a motion to suspend the rules and pass the bill (H. R. 32080) leasing coal lands in Alaska, the vote failed to disclose a quorum responding.

The Speaker pro tempore noted as present certain Members who had not responded, who thereupon voted and were recorded.

The Speaker pro tempore² announced:

Upon this yea-and-nay vote the roll was called and then the names of those failing to respond were again called in alphabetical order. Less than a quorum having answered, the Chair is authorized by clause 3 of Rule XV to cause Members in the Hall who did not vote to be noted as "present." Under clause 1 of the same rule a Member whose name has thus been noted under clause 3 may then vote.

641. In ascertaining the presence of a quorum on a vote by tellers in Committee of the Whole the Chairman notes those present and not voting.

On December 16, 1922,³ during the consideration of the naval appropriation bill in the Committee of the Whole House on the state of the Union, Mr. Otis Wingo, of Arkansas, made the point of order that a quorum was not present.

Mr. Patrick H. Kelley, of Michigan, moved that the committee rise, and on that motion demanded tellers. Tellers were ordered and, the vote being taken, the tellers reported yeas 1, nays 95; not a quorum.

The Chairman⁴ announced:

On this vote the ayes are 1 and the nays are 95; 5 are present and not voting. A quorum is present. The noes have it, and the committee refuses to rise.

642. It is not incumbent upon the Chair to announce the names of Members present and not voting but counted to make a quorum.

On February 27, 1923,⁵ the House being in the Committee of the Whole House on the state of the Union considering the bill (S. 4197) for leasing certain oil lands, a point of no quorum was made, and Mr. Nicholas J. Sinnott, of Oregon, moved that the committee rise. Tellers were ordered and reported that the yeas were 3, nays 86, a quorum not having voted.

The Chairman⁶ said:

On this vote the tellers report that the ayes are 3 and the noes are 86. There are 11 gentlemen present who did not pass between the tellers. A quorum is present, and the committee refuses to rise.

¹Third session Sixty-first Congress, Record, p. 3243.

²Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

³Fourth session Sixty-seventh Congress, Record, p. 588.

⁴J. N. Tinch, of Kansas, Chairman.

⁵Fourth session Sixty-seventh Congress, Record, p. 4816.

⁶James W. Husted, of New York, Chairman.

Mr. Tilman B. Parks, of Arkansas, made the point of order that the names of the additional 11 Members counted by the Chairman to make a quorum should be announced.

The Chairman overruled the point of order.

643. In the Senate the presence of a quorum was held to be necessary during debate.

On July 20, 1914,¹ in the Senate, the river and harbor bill was under consideration when Mr. William Alden Smith, of Michigan, moved that the Senate adjourn.

At the conclusion of the roll call on the motion to adjourn the Vice President announced that 37 Senators had answered; not a quorum.

Mr. Jacob H. Gallinger, of New Hampshire, addressed the Chair and was proceeding in debate when Mr. Nathan P. Bryan, of Florida, made the point of order that debate was not in order in the absence of a quorum.

The Vice President² sustained the point of order and said:

The Chair must sustain the point of order. In the absence of a quorum nothing can be done except to adjourn.

644. While the precedents are not uniform, the practice of the Senate is to permit the withdrawal of suggestions that a quorum is not present prior to ascertainment and announcement by the Chair.

On May 27, 1918,³ in the Senate, Mr. William Saulsbury, of Delaware, moved that the Senate proceed to the consideration of the conference report on the joint resolution to prevent rent profiteering in the District of Columbia.

Mr. Duncan U. Fletcher, of Florida, suggested the absence of a quorum, but withdrew the suggestion before the Vice President had made ascertainment. There was no objection.

645. While the practice in the Senate has varied, the weight of precedent seems to warrant the counting of those present and not voting in ascertaining the presence of a quorum.

On June 4, 1912⁴ the Senate was considering a committee amendment to the legislative, executive, and judicial, appropriation bill.

The question on agreeing to the amendment having been taken, the Vice President⁵ announced:

On the question of agreeing to the committee amendment the yeas are 33 and the nays 13 The Senator from Texas, Mr. Bailey, the Senator from Maine, Mr. Gardner, the Senator from Arizona, Mr. Smith, the Senator from Mississippi, Mr. Williams, the Senator from North Carolina, Mr. Simmons, having announced their pairs and that they refrained from voting, because of being paired, it makes a quorum; the yeas have it, and the amendment is agreed to.

646. On July 3, 1914,⁶ in the Senate, on a motion to proceed to the consideration of the river and harbor bill, there were yeas 34, nays 14, not a quorum.

¹ Second session Sixty-third Congress, Record, p. 12367.

² Thomas R. Marshall, of Indiana, Vice President.

³ Second session Sixty-fifth Congress, Record, p. 7112.

⁴ Second session Sixty-second Congress, Record, p. 7620.

⁵ James S. Sherman, of New York, Vice President.

⁶ Second session Sixty-third Congress, Record, p. 11586.

The Vice President ¹ said:

We might as well settle this question now as at any other time. There are three Senators in the Chamber, Senators Gallinger, Townsend, and Catron, who have announced their pairs. Counting them would more than make a quorum. The Chair is about to make a ruling, and will let the Senate settle it definitely. On the roll call there are 34 yeas and 14 nays. There are three Senators in the Senate Chamber who have announced their pairs. With the vote and the announced pairs there is a quorum present. If those who announced their pairs should vote in the negative, the motion would still prevail. In order that the question may be definitely settled, the Chair rules that the motion does prevail, and will be glad to have an appeal from the decision of the Chair.

647. The Speaker's count in ascertaining the presence of a quorum is not subject to verification by tellers.

On January 20, 1910 ² Mr. James T. Lloyd, of Missouri, addressed the Speaker and proposed to tender his resignation from a select committee to investigate the Interior Department and Bureau of Forestry.

In the course of the ensuing debate Mr. Albert Douglas, of Ohio, made the point of order that no quorum was present.

The Speaker counted and announced that 150 Members were present, not a quorum.

Mr. Oscar W. Underwood, of Alabama, asked for tellers on the question of the presence of a quorum.

The Speaker ³ said:

The Chair will state that under the practice of the House there is no right to demand tellers, on the count of the Chair for a quorum.

648. On July 19, 1919, ⁴ while the House was in the Committee of the Whole House on the state of the Union considering the prohibition enforcement bill, Mr. William L. Igoe, of Missouri, made the point of no quorum.

After ascertaining, the Chairman announced that 95 Members were present and the Committee was without a quorum.

Several Members asked for tellers.

The Chairman ⁵ held that it was not in order to demand tellers on the count by the Chair to ascertain the presence of a quorum.

649. On October 27, 1919, ⁶ the House being in the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 2775) to promote the mining of coal, phosphates, oil, gas, and sodium on the public domain, Mr. Sydney Anderson, of Minnesota, made the point of order that a quorum was not present.

After counting, the Chairman announced that 101 Members were present, a quorum.

¹ Thomas R. Marshall, of Indiana, Vice President.

² Second session Sixty-first Congress, Record, p. 857.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ First session Sixty-sixth Congress, Record, p. 2890.

⁵ James W. Good, of Iowa, Chairman.

⁶ First session Sixty-sixth Congress, Record, p. 7600

Mr. Anderson demanded tellers for the purpose of verifying the count of the Chairman.

The Chairman ¹ said:

The gentleman is not entitled to tellers for the purpose of determining a quorum.

650. On January 7, 1921, the ² House Was considering the sundry civil appropriation bill, when Mr. James A. Gallivan, of Massachusetts, made the point of order that no quorum was present.

The Speaker, after counting announced that 226 Members were present, a quorum.

Mr. Gallivan demanded tellers for the purpose of verifying the count made by the Speaker.

Mr. James R. Mann, of Illinois, submitted:

There is no authority for tellers. The rule provides that the Speaker shall count. If you can demand tellers, that would be a matter of interminable delay if you wanted to filibuster.

The Speaker ³ sustained Mr. Mann's contention and declined to order tellers.

651. On May 4, 1933,⁴ the Committee of the Whole House on the state of the Union was considering the deficiency appropriation bill when Mr. Jeff Busby, of Mississippi, made the point of order that there was not a quorum present.

After counting, the Chairman ⁵ announced that a quorum was present.

Mr. Busby demanded tellers to verify the count of the Chair.

Mr. Edward W. Goss, of Connecticut, made the point of order that the count of the Chair was not subject to verification.

The Chairman said:

It is only necessary for the Chair to announce the number present. The point of order is sustained, and the gentleman will proceed.

652. It is the duty of the Speaker to announce the absence of a quorum without unnecessary delay.

On February 14, 1917,⁶ during prolonged obstruction to the consideration of the joint resolution (H. J. Res. 335) for the appointment of four members of the Board of Managers for the National Home for Disabled Volunteer Soldiers, Mr. Ashton C. Shallenberger, of Nebraska, moved the previous question on the resolution and all amendments thereto to final passage.

The yeas and nays being ordered, the roll was called twice, and a quorum failing to appear, the Speaker delayed the announcement of the result until a quorum should have answered.

Mr. James R. Mann, of Illinois, demanded as a matter of right, that the result of the vote be announced.

Thereupon the Speaker ⁷ announced that the yeas were 123, nays 77, not a quorum, and, on motion of Mr. Shallenberger, a call of the House was ordered.

¹ Martin B. Madden, of Illinois, Chairman.

² Third session Sixty-sixth Congress, Record, p. 1120.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ First session Seventy-third Congress, Record, p. 2894.

⁵ S. D. McReynolds, of Tennessee, chairman.

⁶ Second session Sixty-fourth Congress, Record, p. 3314.

⁷ Champ Clark, of Missouri, Speaker.

653. A point of no quorum may be made at any time, even though another Member have the floor.

On August 7, 1919,¹ Mr. Thomas L. Blanton, of Texas, claimed the floor for a question of privilege and was recognized by the Speaker.

While Mr. Blanton was addressing the House, Mr. John I. Nolan, of California, interrupted and made the point of order that a quorum was not present.

Mr. Blanton contended that he had the floor on a question of high privilege and could not be interrupted by a point of no quorum.

The, Speaker² said:

That certainly is a high privilege, and the Chair will recognize the gentleman from Texas, Mr. Blanton. On the other hand, the point of no quorum can always be made before any business can be transacted. If the gentleman from California, Mr. Nolan, insists on his point of no quorum, the Chair must recognize him.

654. On March 29, 1928³ the House had under consideration the joint resolution (S.J. Res. 113) to amend the immigration act. Mr. Sam D. McReynolds, of Tennessee, had been recognized and was proceeding in debate when Mr. Thomas L. Blanton, of Texas, demanded recognition on a point of order that there was no quorum present.

Mr. McReynolds protested that he had not yielded for an interruption and could not be taken off his feet with a point of no quorum.

The Speaker⁴ ruled:

The point of order of no quorum can be made while the gentleman is speaking. The gentleman from Texas makes the point of order that there is no quorum present. The Chair will count.

655. An action having been completed, it is too late to make the point of order that a quorum was not present when it was taken.

On December 9, 1913,⁵ Mr. Finis J. Garrett, of Tennessee, from the select committee appointed to investigate charges against certain Members of the House, submitted the report of that committee recommending the adoption of accompanying resolutions.

After debate, on motion of Mr. Garrett, the resolutions were referred to the Committee on the Judiciary.

Subsequently Mr. William J. MacDonald, of Michigan, made the point of order that a quorum was not present when the resolutions were acted upon.

Mr. Oscar W. Underwood, of Alabama, made the point of order that it was then too late to raise the question of a quorum on the vote by which the resolutions had been referred.

The Speaker⁶ sustained the point of order.

656. The point of no quorum may be withdrawn prior to ascertainment and announcement by the Chair.

¹First session Sixty-sixth Congress, Record, p. 3701.

²Frederick H. Gillett, of Massachusetts, Speaker.

³First session Seventieth Congress, Record, p. 5578.

⁴Nicholas Longworth, of Ohio, Speaker.

⁵Second session Sixty-third Congress, Journal, p. 32; Record, p. 586.

⁶Champ Clark, of Missouri, Speaker.

On June 30, 1911,¹ in the Senate, during the consideration of the bill to promote reciprocal trade relations with Canada, Mr. William E. Borah, of Idaho, suggested the absence of a quorum.

Before opportunity had been afforded to pass upon the question Mr. Borah withdrew the suggestion.

Mr. Weldon B. Heyburn, of Idaho, raised the question as to whether the suggestion, once made, was subject to withdrawal.

The Vice President² said:

The Chair sees no reason why it can not be withdrawn. It seems to the Chair, that any Senator, possibly immediately after suggesting the absence of a quorum, might discover that he did not wish to make the suggestion, and withdraw it. The Senator might by observation conclude a quorum was present. The Chair had not ordered the roll to be called.

657. The point of no quorum may not be withdrawn after the absence of a quorum has been ascertained and announced.

On April 14, 1914,³ while the House was considering the legislative, executive, and judicial appropriation bill in the Committee of the Whole House on the state of the Union, Mr. Frank Buchanan, of Illinois, made the point of no quorum.

The Chairman, after counting, announced that 71 Members were present, not a quorum.

Thereupon Mr. Buchanan withdrew the point of no quorum and the Chairman announced the withdrawal.

Mr. James R. Mann, of Illinois, submitted that after announcement by the Chair that a quorum was not present it was too late to withdraw the point.

The Chairman⁴ sustained Mr. Mann's contention, and directed the Clerk to call the roll.

658. On June 27, 1918,⁵ the House was considering the conference report on the Post Office appropriation bill.

Mr. Martin B. Madden made the point that there was not a quorum present.

The Speaker,⁶ after counting, announced that 127 Members were present, not a quorum.

Mr. Madden then proposed to withdraw the point of no quorum, but the Speaker held that as the absence of a quorum had been ascertained, and announced, it was too late to withdraw the point of order.

659. The absence of a quorum being ascertained, debate is not in order.

On February 17, 1911,⁷ while the House was considering the omnibus claims bill, Mr. James R. Mann, of Illinois, made the point of order that no quorum was present.

¹ First session Sixty-second Congress, Senate Journal, p. 113; Record, p. 2599.

² James S. Sherman, of New York, Vice President.

³ Second session Sixty-third Congress, Record, p. 6686.

⁴ John N. Garner, of Texas, chairman.

⁵ Second session Sixty-fifth Congress, Record, p. 8384.

⁶ Champ Clark, of Missouri, Speaker.

⁷ Third session Sixty-first Congress, Record, p. 2807.

A quorum failing to appear on a call of the House, Mr. William W. Rucker, of Missouri, addressed the Chair and was proceeding in debate. Mr. Mann demanded the regular order, and the Speaker pro tempore¹ ruled that in the absence of a quorum debate was not in order.

660. In the absence of a quorum no business may be transacted, even by unanimous consent.

On March 16, 1908² Mr. Elmer A. Morse, of Wisconsin moved to suspend the rules and pass the bill (S. 4046) to authorize the cutting of timber on Indian reservations. After debate, the House found itself without a quorum.

Thereupon Mr. John W. Gaines, of Tennessee, asked unanimous consent to extend remarks in the Record.

The Speaker³ held that in the absence of a quorum no business could be transacted, even by unanimous consent, and entertained a motion to adjourn.

661. On February 27, 1919,⁴ after the Journal had been approved, Mr. Scott Ferris, of Oklahoma, made a point of order that there was not a quorum present. The Speaker, upon counting, found 97 Members present, not a quorum.

Whereupon Mr. Louis C. Cramton, of Michigan, proposed to submit a parliamentary inquiry.

The Speaker⁵ held that a parliamentary inquiry could not be entertained in the absence of a quorum.

162. No business, however highly privileged, may be transacted in the absence of a quorum.

On June 27, 1918,⁶ Mr. Halvor Steenerson, of Minnesota, claimed the floor on a question of the privilege of the House.

Mr. John N. Garner made the point of order that a quorum was not present.

A quorum not being present, the Speaker⁷ declined to recognize Mr. Steenerson to present a question of privilege.

663. Prayer by the Chaplain at the opening of the daily session is not business requiring the presence of a quorum, and the Speaker declines to entertain a point of no quorum before prayer is offered.

On February 4, 1921,⁸ the Speaker called the House to order and announced that the Chaplain would offer prayer.

Mr. James V. McClintic, of Oklahoma, made the point of order that a quorum was not present.

The Speaker⁹ said:

A few days ago when the gentleman from Oklahoma, Mr. McClintic, before the Chaplain's prayer, raised the point of no quorum the gentleman from Pennsylvania, Mr. Watson, argued

¹ Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

² First session Sixtieth Congress, Record, p. 3414.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ Third session Sixty-fifth Congress, Record, p. 4482.

⁵ Champ Clark, of Missouri, Speaker.

⁶ Second session Sixty-fifth Congress, Record, p. 8390.

⁷ Champ Clark, of Missouri, Speaker.

⁸ Third session Sixty-sixth Congress, Journal, p. 158; Record, p. 2592.

⁹ Frederick H. Gillett, of Massachusetts, Speaker.

that the gentleman from Oklahoma had no right to make it at that stage of the proceedings. The Chair at the time sustained the right of the gentleman from Oklahoma. Since then the Chair has been considering the matter and has concluded he was mistaken in his decision, and that the Member from Oklahoma has no right to make the point of no quorum before the Chaplain offers prayer. Rule VIII provides that—

“The Chaplain shall attend at the commencement of each day’s sitting of the House and open the same with prayer.”

Obviously that provides that the opening exercise of the House shall be prayer by the Chaplain. The Chair thinks that is not a matter of business, but that it is a matter of ceremony, of devotion, and that its appeal is not to the duty of Members to hear it but to their sense of reverence. Presence of Members is not compulsory. Rule I provides that the Speaker shall take the chair and call the Members to order, and on the appearance of a quorum cause the Journal to be read. There it specifically says that for the reading of the Journal, which is the first business after prayer by the Chaplain, a quorum shall appear. By indirection that would indicate that the prayer does not require the presence of a quorum, inasmuch as the rule particularly says that it does require a quorum to read the Journal.

The Chair therefore is disposed to think that the offering of prayer by the Chaplain is not business of the House that requires a quorum, and that regardless of any gentleman’s sense of reverence or propriety it is not in order to make the point of order that there is no quorum present.

The Chaplain will offer prayer.

An appeal by Mr. McClintic from the decision of the Chair was, on motion of Mr. Ernest R. Ackerman, of New Jersey, laid on the table, yeas 233, nays 70.

664. The hour fixed by special order for a recess having arrived, the Speaker held the House to be in recess although a quorum was not present.

The House having recessed after finding itself without a quorum, at the expiration of the recess the Speaker announced the absence of a quorum and entertained a motion for a call of the House.

A recess differs from an adjournment in its effect upon pending business and the House resumes consideration of unfinished business under conditions obtaining at the time recess was taken.

On June 4, 1920,¹ Mr. Philip P. Campbell, of Kansas, from the Committee on Rules, submitted a privileged report from that committee providing for the consideration of a resolution to investigate the escape of Grover Cleveland Bergdoll.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no quorum present. After ascertainment that a quorum was not present, the Speaker, under an order previously made by the House, declared the House in recess until 8 o’clock p.m.

The recess having expired, the Speaker, upon calling the House to order, announced that in the absence of a quorum at the time recess was taken, the absence of a quorum must be presumed upon expiration of the recess, and thereupon entertained a motion for a call of the House.

Mr. Blanton submitted that a recess left the House in the same position as if adjournment had been taken and that a quorum was presumed to be present until otherwise disclosed.

The Speaker² said:

The Chair thinks not. The Chair thinks a recess is not the same as an adjournment. We resume where we left off at the time of recess. Without objection, a call of the House is ordered.

¹ Second session Sixty-sixth Congress, Record, p. 8588

² Frederick H. Gillett, of Massachusetts, Speaker.

The doorkeeper will close the doors, the Sergeant of Arms will notify the absentees, and the clerk will call the roll.

665. Following a motion to resolve into Committee of the Whole and pending a request for unanimous consent to fix control of time for debate, a point of no quorum may be raised and no business is in order until the presence of a quorum is ascertained.

Following a roll call on resolving into Committee of the Whole precipitated by a point of no quorum, and before the announcement of the result, the Speaker may entertain a unanimous-consent request to limit or control time for debate, but after the result of the vote has been announced the House resolves at once into Committee of the Whole and no request relating to time for debate or other intermediate business is in order.

On January 31, 1928,¹ Mr. Henry E. Barbour, of California, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the War Department appropriation bill, and pending that motion had presented a unanimous-consent request to limit and control time for general debate. Mr. Thomas L. Blanton, of Texas, raised the question of a quorum.

There being no quorum present, the Speaker² directed a call of the House on the pending question, and the vote having been taken, said:

On this vote 328 Members are recorded—a quorum. But before announcing the result of the vote the Chair will again put the request of the gentlemen from California that the general debate on this bill be limited to 10 hours, one-half the time to be controlled by himself and one-half controlled by the gentleman from Virginia, Mr. Harrison. Is there objection?

There was no objection and the Speaker announced:

Upon this question the yeas are 328 and the nays none.

The motion is agreed to.

666. A point of no quorum is always in order and may be made when the Committee of the Whole rises and before the report of the Chairman has been received.

On December 13, 1924,³ the Committee of the Whole House, having concluded the consideration of a bill on the Private Calendar, rose with instructions to the Chairman to report the bill back to the House with amendments and with the recommendation that the amendments be agreed to and the bill as amended be passed.

The Speaker⁴ resumed the chair, but before the Chairman could report Mr. Thomas L. Blanton, of Texas, made a point of no quorum.

Mr. Finis J. Garrett, of Tennessee, made the point of order that the House had received no official knowledge of the fact that the committee had risen, and a point of no quorum could not be entertained until the Chairman had reported.

The Speaker overruled the point of order and, having ascertained that a quorum was not present, entertained a motion for a call of the House.

¹ First session Seventieth Congress, Record, p. 2259.

² Nicholas Longworth, of Ohio, Speaker.

³ Second session Sixty-eighth Congress, Journal, p. 408; Record, p. 624.

⁴ Frederick H. Gillett, Massachusetts Speaker.

667. On February 5, 1921,¹ the Speaker took the chair to receive a report from the Committee of the Whole House on the state of the Union, which had been considering the Army appropriation bill, and had risen with direction to its Chairman to report the bill to the House with favorable recommendation.

Mr. George Huddleston, of Alabama, made the point of order that a quorum of the House was not present.

The Speaker suggested that the report of the Chairman of the Committee of the Whole be first received.

Mr. Huddleston declined to delay the point of order and the Speaker,² having ascertained the absence of a quorum, recognized Mr. Frank W. Mondell, of Wyoming, to move a call of the House.

668. While formerly the roll was called but once on failure of a quorum in the Committee of the Whole, the recent practice is to call the roll twice, as in the House.

On December 20, 1913,³ the House was considering the District of Columbia appropriation bill in the Committee of the Whole House on the state of the Union. The committee finding itself without a quorum the roll was called. At the conclusion of the first roll call and after a quorum had appeared, the Clerk, as usual, proceeded to call a second time the names of Members failing to respond on the first roll call.

Mr. William H. Stafford, of Wisconsin, said:

Mr. Chairman, I understand this is a call of the names of Members who failed to answer on the first call. I wish to direct the attention of the Chairman to the fact that when a quorum appears in committee but one call of the roll is necessary, and I cite to the Chair the fourth volume of Hinds Precedents.

The Chairman⁴ ruled:

It has been the practice of the House, without objection on the part of anyone, to call the names of those who failed to respond the first time.

669. On October 15, 1919,⁵ while the immigration bill was under consideration in the Committee of the Whole House on the state of the Union, the committee found itself without a quorum, and the roll was called. A quorum having appeared on the first roll call, the Chairman directed that the roll be not called a second time.

Mr. Otis Wingo, of Arkansas, made the point of order that names of those who had failed to answer on the first call should be called a second time.

The Chairman⁶ overruled the point of order and declined to entertain an appeal by Mr. Wingo from that decision.

On the next day,⁷ immediately following the reading and approval of the Journal, Mr. Wingo, addressing the House by unanimous consent, said:

Mr. Speaker, the rules of the House provide that the rules of the House shall control the action in the Committee of the Whole and the Committee of the Whole House on the state of

¹ Third session Sixty-sixth Congress, Record, p. 2683.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ Second session Sixty-third Congress, Record, p. 1318.

⁴ Cordell Hull, of Tennessee, Chairman.

⁵ First session Sixty-sixth Congress, Record, p. 6983.

⁶ Simeon D. Fess, of Ohio, Chairman.

⁷ Record, p. 7015.

the Union wherever applicable. The rules of the House specifically provide that after the roll has been once called, the Clerk shall call the names of Members not answering on the first roll call. Now, the chairman based his decision upon the decision of Mr. Speaker Crisp in 1894. If Members of the House will investigate that decision, they will find that Mr. Speaker Crisp rendered that opinion offhand. It was not challenged. It was immaterial at the time, and there has not been any discussion I have been able to find, for the reason that this is the only time that I know of that it has ever been raised. Now, I have investigated, the older Members of the House having helped, as to when the custom first grew up. In 1880 the insistence of Members was such that Mr. Blackburn, of Kentucky, chairman of the Committee on Rules, brought in certain amendments to the rules, including one which provided for this second roll call. He suggests that the second call is only upon a "call of the House." The rule is very clear, Mr. Speaker; it says upon "every roll call." That includes any roll call, because there is no rule of the House governing the call of rolls in the committee other than the rule that the rules of the House shall control. The experience of the House has shown that it is infinitely wiser, it saves time, to permit the Clerk to call the roll as provided by the rule, of those who failed to answer upon the first roll call; that it is more orderly and less productive of confusion and takes less time than to permit Members to gather around as they did yesterday afternoon in the pit of the House and let the Clerk call them one at a time. I am content to drop the matter, as I am assured that the rules in this regard will be respected in the future.

670. A quorum having voted on a motion to rise, made after the Committee of the Whole had found itself without a quorum and before the roll was called, the committee resumed its session.

On May 13, 1916,¹ while the House in the Committee of the Whole House on the state of the Union was considering the rural credits bill a point of no quorum was made. The Chairman announced that 82 Members were present, not a quorum, and directed the Clerk to call the roll. The Clerk called the first name on the roll, when Mr. James R. Mann, of Illinois, moved that the committee rise. On a division, demanded by Mr. Mann, the yeas were 27, nays 40, a quorum not having voted. Tellers were ordered and the committee again divided. The Chairman announced that the yeas were 2, nays 101, a quorum had voted, and the motion was not agreed to.

Mr. J. Hampton Moore, of Pennsylvania, made the point of order that after the Chairman had directed the roll to be called and the Clerk had called the first name a motion to rise was not in order.

Mr. Mann said:

The Clerk called the name of Mr. Abercrombie while I was making that motion, and on my feet for that purpose, and the Chair could not put me out from making that motion by the activity of the Clerk. This rule has been frequently construed in the same way, and the Chair has always held heretofore that when on a motion to rise the presence of a quorum was developed, there was no roll call required because there was a quorum present.

The Chairman² overruled the point of order.

671. When the Committee of the Whole finds itself without a quorum, the motion to rise is privileged.

In ascertaining the presence of a quorum in the Committee of the Whole the Chairman counts Members in the Chamber failing to vote on an incidental motion to rise.

¹ First session Sixty-fourth Congress, Record, p. 7906.

² John N. Garner, of Texas, Chairman.

A quorum having voted on a motion to rise, following the announcement by the Chairman that a quorum was not present, the committee resumed consideration of interrupted business.

On January 10, 1931,¹ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

Mr. Tilman B. Parks, of Arkansas, raised a point of no quorum and the Chairman, after counting, announced that a quorum was not present.

Mr. William H. Stafford, of Wisconsin, moved that the committee rise, and on that motion demanded tellers.

The question being taken, the tellers reported yeas 2, nays 87.

Whereupon, the Chairman² said:

The Chair will count. [After counting.] The Chair has been able to count over 20 members in the Chamber who did not pass between the tellers. A quorum is present.

Mr. Parks submitted that the total number reported as present was 11 short of a quorum.

The Chairman said:

It is not a quorum, but the Chair counted more than 20 Members who did not pass between the tellers. There are more than 100 Members present in the Chamber at this moment by the count of the Chair. A quorum is present, and the gentleman from Mississippi is recognized.

672. The Committee of the Whole, rising to report the lack of quorum, resumes its sitting upon the appearance of a quorum without intervening motion or debate.

On June 20, 1922,³ the Committee of the Whole House on the state of the Union rose and reported to the House that during its consideration of the bill (H. R. 12022) relative to naturalization and citizenship of married women, it had found itself without a quorum, and the roll being called 239 Members responded to their names, a quorum, and a list of absentees was submitted for entry in the Journal.

Thereupon Mr. Rufus Hardy, of Texas, addressed the Speaker and asked leave to extend his remarks in the Record.

The Speaker⁴ said:

The Chair has no right to consider any such request. The committee has risen temporarily and the Speaker has resumed the chair only to receive a report. The Chair has no right to recognize the gentleman. The committee will resume its session.

673. The Committee of the Whole having risen and reported that finding itself without a quorum the roll was called under the rule and a quorum had appeared, the Speaker declined to entertain a motion to adjourn, and the committee resumed its sitting.

On June 20, 1914,⁵ the Committee of the Whole House on the state of the Union, having under consideration the sundry civil appropriation bill, rose and reported

¹ Third session Seventy-first Congress, Record, p. 1946.

² John Q. Tilson, of Connecticut, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 9045.

⁴ Frederick H. Gillett, of Massachusetts, Speaker.

⁵ Second session Sixty-third Congress, Journal. p. 677; Record, p. 10819.

that, in the absence of a quorum, the roll had been called and 162 Members answered to their names, a quorum.

Whereupon, Mr. James R. Mann, of Illinois, moved that the House do now adjourn.

Mr. Oscar W. Underwood, of Alabama, made a point of order that the motion to adjourn was not in order at such time.

After debate, the Speaker¹ said:

The precedents are very vague. In the one the gentleman from Illinois, Mr. Mann, cited there was a motion made to adjourn in a situation similar to the present one, but nobody raised the point. About six weeks ago the point was raised, but before that on two occasions when the Chair was inclined to transact some small business that was on the Speaker's table, the gentleman from Illinois himself raised the point that we could not do anything except go back into the committee. About six weeks ago the gentleman from Massachusetts, Mr. Gardner, made a motion—the Chair thinks it was a motion to adjourn—and the Chair overruled him and he appealed from the decision of the Chair, and we had a roll call on it by which the Chair was sustained. While the roll was being called the Chair had time to study the question. And there is no precedent of very great light on the subject. But the performance that the House went through that evening demonstrated that if motions of one kind and another be made after the committee rises for lack of a quorum or after a quorum is ascertained it affords means for filibustering. The House for some time has frowned on filibustering, and in this case the Chair would rather rely on his own opinion, delivered in May, which was positive and clear, whether right or wrong, than to depend on this vague case cited by the gentleman from Illinois. And the Chair sustains the point of order.

The Speaker declined to entertain an appeal from this decision on the ground that the rule was mandatory and that to entertain an appeal would be to defeat the purpose of the rule.

674. While the Committee of the Whole, rising to report the lack of a quorum, resumes its sitting on the appearance of a quorum, the rule does not so provide if a quorum fails to appear, and in such event a quorum of the House is required.

On February 18, 1911,² the Committee of the Whole House rose, and the Chairman reported that it had had under consideration bills on the Private Calendar, and finding itself without a quorum, he had caused the roll to be called, and that less than a quorum had answered to their names.

A call of the House was ordered, and when 100 Members had answered to their names, Mr. Frank Clark, of Florida, made the point of order that a quorum of the committee having appeared, under the rule the Committee of the Whole House should resume its sitting without waiting until a quorum of the House appeared.

The Speaker pro tempore³ ruled:

Reference has been made to paragraph 2 of Rule XXIII, which provides:

"Whenever a Committee of the Whole House or of the Whole House on the state of the Union finds itself without a quorum, which shall consist of 100 Members, the Chairman shall cause the roll to be called, and thereupon the committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a

¹ Champ Clark, of Missouri, Speaker.

² Third session Sixty-first Congress, Record, p. 2865.

³ Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.”

That event has happened several times during this legislative day. The present occupant of the chair has upon several occasions, when the Chairman of the Committee of the Whole House has reported a roll call in that committee and more than 100 Members appeared upon that call, directed the Committee of the Whole to resume its sitting without any motion or order of the House.

The rule permits that to be done when a quorum of 100 has appeared on the roll call in the Committee of the Whole House. That is what is referred to when the rule says “if on such call a quorum shall appear, the committee shall resume its sitting.” But in this instance, on the last roll call in the Committee of the Whole, no quorum appeared; only 98 gentlemen answered to their names. Therefore the rule loses its authority. It does not apply. It gives to the Speaker no authority to direct the committee to resume its session or to declare that the House shall be in Committee of the Whole, except upon its vote.

Since that report was made by the Chairman of the Committee of the Whole there has been made and voted upon a motion to adjourn. After that a call of the House was ordered. We are now proceeding under that call. The roll call in Committee of the Whole is to ascertain if a quorum of that committee is present; 100 is sufficient for that call; but this is a call of the House ordered by the House. It is not such a call as that referred to in the rule. The Chair is clearly of the opinion that when a quorum of the House appears the House may order the committee to resume its session, but that under the rule, in the absence of a quorum, it is beyond the power of the Speaker to make such an order, and therefore there is nothing to do but wait until we have a quorum of the House.

675. Ascertainment of the absence of a quorum invalidates proceeding on which the point of no quorum was raised.

On February 22, 1924,¹ during the consideration of the revenue bill in the Committee of the Whole House on the state of the Union, Mr. Marvin Jones, of Texas, offered an amendment to a pending amendment submitted by Mr. Eugene Black, of Texas. The question being taken, resulted yeas 21, noes 61, when Mr. Jones made the point of order that a quorum was not present.

The Chairman announced that no quorum was present and the committee determined to rise.

On the following day, when the committee was again in session, the Chairman announced:

When the committee rose the question was on the amendment of the gentleman from Texas, Mr. Jones, to the amendment of the gentleman from Texas, Mr. Black. There being no quorum present, the proceedings in that matter were nullified. The question now is on agreeing to the Jones amendment.

Mr. Thomas L. Blanton, of Texas, proposed to offer a substitute for the pending amendment.

The Chairman² said.

The Chair will state his understanding of the parliamentary situation. The Chair examined the Record on this matter last night quite carefully. There had been a vote and the number of votes on each side is recorded in the Record, but there had been no decision; therefore, the committee was dividing at the time the point of order was made. Now the gentleman from Texas [Mr. Blanton] seeks to offer a substitute. The Chair does not think it is in order at this time because of the fact that it was not offered before the committee divided. A substitute will be in order after the vote on the Jones amendment.

¹ First session Sixty-eighth Congress, Record, p. 2994.

² William J. Graham, of Illinois, Chairman.

676. No quorum being present when a vote is taken in the Committee of the Whole, and the committee having risen before a quorum appeared, such vote is invalid, and the question on which it was taken is pending when the committee again resumes its session.

On December 5, 1919,¹ the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill to establish standard weights and measures.

The bill was read by title, when Mr. Warren Gard, of Ohio, rose to a parliamentary inquiry and asked if an amendment was pending to section 1.

The Chairman² said:

The Chair will state that last night, immediately before the committee rose, the gentleman from Arkansas, Mr. Wingo, offered an amendment to the section. A divisional vote being asked for and taken, the lack of a quorum was disclosed, whereupon the gentleman from Arkansas made the point of order that no quorum was present; thereupon the committee rose. Under Rule XXIII, section 8, it provides that "the rules of proceeding in the House shall be observed in Committee of the Whole so far as they may be applicable."

Paragraph 503, Jefferson's Manual, provides that "when from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division and must be resumed at that point at any future day." Were it necessary to further fortify the Chair's ruling, he would refer to volume 4 of Hinds, paragraph 2974, where in a similar case it was decided that the vote was made invalid on the establishment of a point of no quorum. The Chair rules that the vote now comes upon the amendment offered by the gentleman from Arkansas.

677. On March 13, 1920,³ while the House was considering the Army reorganization bill in the Committee of the Whole House on the state of the Union, tellers were demanded on the question of agreeing to an amendment offered by Mr. Tom Connally, of Texas. Mr. Warren Gard, of Ohio, made the point of order that a quorum was not present. Before the point of order could be decided the committee determined to rise, and the Chairman reported to the House that the committee had come to no resolution.

On March 16 the House again resolved itself into the Committee of the Whole for the consideration of this bill. The amendment offered by Mr. Connally was again read and the Chairman again put the question on agreeing to the amendment, for a viva voce vote.

Mr. Finis J. Garrett, of Tennessee, submitted that the question should be on the ordering of tellers, as the committee had risen from its previous session before the Chairman could determine the absence of a quorum.

Mr. James R. Mann, of Illinois, said:

No; the point of no quorum being made, the committee rose, and the committee could not by that action require that the vote that was taken should be decisive. The demand for tellers passed away when the point of no quorum was made and invariably returns to the viva voce vote. A demand for the yeas and nays today might not be insisted upon tomorrow. The committee by rising could not determine a quorum was here, because it does not require a quorum to rise.

According to that contention, 25 men in the House could carry an amendment against the point of no quorum. The gentleman will see that if the committee could rise, thereby preventing

¹ Second session Sixty-sixth Congress, Record, p. 194.

² Frederick C. Hicks, of New York, Chairman.

³ Second session Sixty-sixth Congress, Record p. 4401.

the Chair from counting a quorum, a small minority of a quorum could agree to an amendment although the point of no quorum was made. I have frequently seen the case, where the vote was taken, the demand for the yeas and nays was made, a point of no quorum was made, and the House adjourned, while the gentleman from Missouri was Speaker, and then when the House met it paid no attention to the demand for the yeas and nays, but took the vote over again, viva voce sometimes, with no demand for the yeas and nays being made at all. It has been the invariable practice of the House, and it is for the convenience of the House. No one can possibly lose any right by a technical construction of the proposition.

The Chairman¹ held that, the committee having risen after the point of no quorum was made and without determining the presence of a quorum, the vote recurred on the original question of agreeing to the amendment and not on the question of ordering tellers.

¹ John Q. Tilson, of Connecticut, Chairman